

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICHARD C. WURZINGER,

Defendant.

ORDER

05-cr-52-bbc

07-cv-466-bbc

On August 24, 2009, I dismissed Richard C. Wurzinger's petition for a writ of habeas corpus under 28 U.S.C. § 2255 without prejudice for petitioner's failure to obtain the authorization to file a successive petition required by 28 U.S.C. § 2244(b)(3)(A). On February 9, 2011 defendant filed a motion for certificate of appealability. I determined that it is not reasonably debatable that Wurzinger's petition was a "second or successive petition" within the meaning of § 2244(b)(3), and therefore I denied his request for a certificate of appealability.

Now defendant has filed a notice of appeal in which he states that he wishes to appeal his §2255 motion. Since the last order entered in this case was the February 16, 2011 order denying defendant's request for a certificate of appealability, I am assuming that he meant

to appeal the denial of the certificate directly to the court of appeals pursuant to Fed. R. App. P. 22(b) which says that if a district judge denies an application for a certificate of appealability, the petitioner may request a circuit judge to issue one.

I will forward defendant's notice of appeal to the court of appeals for its consideration.

Entered this 1st day of April, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge